

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1031 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MAHINDRA & MAHINDRA LTD.

Versus

AMBUJA MOTORS  
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Appearance:

MR PV NANAVATI for Petitioners  
MR PM BHATT for Respondent No. 1  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. The petitioners above named have preferred this petition under Section 115 of the Code of Civil Procedure, 1908 (for short 'the Code') challenging the order dated 1st May, 1999, recorded by the learned 2nd Jt.Civil Judge (J.D.), Ahmedabad (Rural), below application Exh.34 in Regular Civil Suit No.710 of 1998, whereby the learned trial Judge found that the Ahmedabad Court had jurisdiction to entertain the suit and therefore the application Exh.34 came to be dismissed by the said order of the learned trial Judge.

2. The facts may be briefly stated as follows:

The respondent herein instituted aforesaid civil suit being civil suit No.710 of 1998, before the Civil Court at Ahmedabad (Rural), stating that the petitioners above named have committed breach of contract and therefore the respondent filed a suit for a relief for a perpetual injunction restraining the petitioners from terminating the dealership in favour of the respondent for Mahindra and Mahindra Limited in respect of Dholka Taluka of Ahmedabad District. There are other prayers also made in the plaint.

3. There is no dispute between the parties that the parties entered into a contract for dealership. The respondent is a dealer of tractor and the petitioners are the manufacturers of the tractors. There was a contract between the petitioners and the respondent for dealership of those tractors to be sold in Dholka Taluka of Ahmedabad District. The contract is not in dispute. It has been effected on 31st March, 1998. The petitioners address a letter to the respondent dtd 31st March, 1998, and the respondent reciprocate the same and gave a positive response and signed the said contract and returned it to the petitioners. Therefore, the contract took place between petitioners and respondent. The contract is in writing signed by both the parties. This fact is not in dispute.

4. Since the dispute arose, the aforesaid civil suit was filed by respondent against the petitioners in the Civil Court at Ahmedabad. The petitioners submitted an application Exh.34 stating there is a covenant in the agreement that, in case of dispute the courts at Mumbai will have jurisdiction to entertain the same. The said application was granted and the issue as to jurisdiction was ordered to be framed by order dated 25th April, 1999. It was further directed that it be heard as preliminary issue. Thereafter the parties were heard at length. After hearing the parties and after appreciating the documents on record, the trial court found that Mumbai Court had in fact no jurisdiction to entertain the suit as no part of cause of action had arisen within the jurisdiction of the court at Mumbai. That therefore the parties could not confer jurisdiction on the court at Mumbai and hence Mumbai court has no jurisdiction to entertain the suit and therefore the Ahmedabad Court had jurisdiction to entertain the suit because the contract had taken place at Ahmedabad and that is one part and parcel of the cause of action. Therefore, the trial court found that the court at Ahmedabad and not the court at Mumbai has jurisdiction to entertain the suit, and

consequently, the aforesaid issue was answered against the petitioners and in favour of the respondent holding that the Ahmedabad Court had jurisdiction to entertain the suit.

5. Feeling aggrieved by the said order of the trial court dated 1.5.99, the petitioners have preferred this revision before this court.

6. It has been mainly contended here that, the trial court has committed serious illegality in misinterpreting the jurisdiction fact. That the trial court has misread the facts on record and misinterpreted the clause 13 with respect to jurisdiction in the said contract of the dealership. That the trial court has committed error in holding that Mumbai Court had no jurisdiction to entertain the suit. That the trial court has erred in holding that only Ahmedabad Court had jurisdiction to entertain the suit. That as a whole the order of the trial court is illegal and erroneous and deserves to be set aside. The petitioners therefore prayed that the present Civil Revision application be allowed.

7. After hearing the parties on notice, rule was issued. I have heard learned advocates for the parties and have perused the papers.

8. Now, it may be stated at the outset that, the contract in question is in writing which is placed on the record of the trial court. It is dated 31st March, 1998, and the said contract has been signed by both the parties. The contract in question is not at all in dispute either before the trial court or before this court. It is also an admitted position that the petitioners had signed the contract at Mumbai the respondent accepted that contract and signed the same at Ahmedabad and conveyed the said contract to the petitioners at Mumbai. There is no dispute with respect to that position also. The terms and conditions of the contract have been enumerated in the contract dtd 31st March, 1998. The parties are not disputing with respect to the terms and conditions of the said contract.

Clause 13 of the said contract is reproduced hereinbelow for ready reference as the said clause is an important aspect of the matter:

"Jurisdiction : For the legal purpose, this Letter of Intent shall be considered to have been issued by the company at Mumbai on the date mentioned herein above and any dispute or any

legal proceedings arising out of this Letter of Intent or relating to or in any manner connected with the Dealership shall be referred to or executed in Mumbai Courts only."

Now the aforesaid terms make it clear that for the legal purpose any dispute or any legal proceedings arising out of this letter of intent or relating to or in any manner connected with the dealership shall be referred to or executed in Mumbai Courts only. This clause in this contract is not in dispute.

9. On the strength of the aforesaid facts, learned advocate for the petitioners has argued at length that, in view of the aforesaid position, the contract has taken place in Mumbai as well as at Ahmedabad, therefore, Mumbai Court had jurisdiction to entertain the suit. By aforesaid clause 13, the jurisdiction of other courts has been agreed to be excluded and therefore the suit ought to have been filed before the court at Mumbai. On the other hand, it has been strenuously argued by the learned advocate for the respondent that, it is nodoubt true that when two courts have jurisdiction to entertain the civil litigation, the parties can come to an agreement in conferring jurisdiction to only one of the two and thereby excluding jurisdiction to another court. There is no dispute about this position also.

10. The question before me is as to whether the contract can be said to have been taken place at Mumbai and whether cause of action can be said to have been taken place at Mumbai. So far Ahmedabad is concerned, there is no serious dispute that the contract has been signed by the respondent at Ahmedabad and therefore part of cause of action has admittedly arisen at Ahmedabad. So far Mumbai is concerned, the dispute is that no part of cause of action has arisen in Mumbai and therefore suit could not be filed in Mumbai and consequently the parties could not, by agreement, confer jurisdiction on the courts at Mumbai.

11. Now in the matter of contracts which take place by postal communication or by telecommunication the ultimate contract will take place on several consideration. In the present case, the petitioners signed the proposal at Mumbai and sent it to the respondent from Mumbai to Ahmedabad. Therefore it can be said that the proposal commenced at Mumbai and therefore a part of cause of action had arisen at Mumbai. Then the proposal came down to Ahmedabad and it was accepted and signed by the respondent at Ahmedabad therefore one part of cause of action can be said to have arisen even at

Ahmedabad. Thereafter the contract was duly signed by the respondent and it was conveyed to the petitioners at Mumbai. The acceptance of the contract was received by the petitioners at Mumbai and therefore that part of cause of action had again arisen at Mumbai. Therefore it cannot be said that no part of contract has taken place at Mumbai. Then the contract is with respect to the dealership of the tractors to be provided by the petitioners. The tractors were to be sent from Mumbai and therefore it can be again said that some part of cause of action would arise at Mumbai.

12. It has come out during the course of the argument that, the respondent was required to make payment in advance to the petitioners. Naturally, the petitioners have their offices and head quarter at Mumbai and therefore the payments were required to be made by the respondent to the petitioners at Mumbai or atleast the respondent had to see that the petitioners get money at Mumbai. Therefore, when the payments are to be made at Mumbai then some part of cause of action can be said to have arisen within the jurisdiction of the court at Mumbai. Then the payments may be sent by respondent from Ahmedabad, therefore, again some part of cause of action can be said to have arisen even at Ahmedabad.

13. In aforesaid view of the matter, it is very clear that, some part of cause of action has arisen at Mumbai and some part of the cause of action has arisen at Ahmedabad. It, therefore, cannot be said that no part of cause of action has arisen at Mumbai. Even the letter dated 31st March, 1998 made it clear that, if the respondent accepted the agreement then he was required to sign it and send it to the petitioners at Mumbai. That has been done by the respondent and there is no dispute about the same. This clearly shows that, so long as the acceptance of the agreement is not made known to the petitioners, the contract would be incomplete. So on the part of the petitioners, the contract would be completed as soon as the petitioners learnt that the respondent had accepted the proposal. Since the petitioners have been staying at Mumbai and since they are dealing in business at Mumbai and their offices and headquarters situated at Mumbai, the acceptance was naturally conveyed to them at Mumbai and at Mumbai they came to know that the contract has been accepted by the respondent. Therefore, so far the petitioners are concerned, it has to be held that the contract was concluded at Mumbai vis-a-vis the petitioners.

14. As for the respondent, the respondent received

the contract duly signed by the petitioners at Ahmedabad. They signed the contract and accepted the same and therefore it can be said that so far the respondent is concerned, the contract was concluded at Ahmedabad. Therefore, again the contract took place at two different places one at Mumbai and another at Ahmedabad. It, therefore, cannot be said that no cause of action had arisen at Mumbai. It also cannot be said that no part of agreement had taken place at Mumbai. On the contrary, the aforesaid facts give rise to a definite conclusion that the contract has taken place at two places one at Mumbai and another at Ahmedabad. Therefore when two places can claim to be the places of the contract, both the places will have jurisdiction to entertain any suit arising out of the said contract. Here, the relief has been claimed on alleged breach of contract of dealership contract and the suit arose out of the said contract and, therefore, it has to be held that the suit relating to breach of contract of dealership could be entertained either at Mumbai or at Ahmedabad. In other words, both the courts have jurisdiction to entertain the suit. If jurisdiction is conferred by mutual agreement then that court alone has jurisdiction to entertain the suit.

15. The trial court has observed that the contract has taken place at Ahmedabad. But the aforesaid aspect have been totally omitted by the trial court and has not considered that the contract was despatched from Mumbai. The trial court has also omitted to consider that the acceptance has been conveyed to the petitioners at Mumbai. The trial court has also not considered that the acceptance was known to the petitioners at Mumbai. The trial court has also not considered the question of payment to be received by the petitioners at Mumbai. All these things have been totally omitted from consideration by the trial court.

16. Learned advocate for the respondent has argued that, the contract has concluded at Ahmedabad and, therefore, only the court at Ahmedabad has jurisdiction to entertain the suit between the parties arising out of the said contract and therefore the court at Mumbai will have no jurisdiction to entertain the suit arising out of the said contract. True. Qua the respondent, the contract can be said to have been concluded at Ahmedabad as soon as the respondent signed the contract and despatched it to the petitioners. However, Qua the petitioners, the contract has to be treated to have been concluded at Mumbai when the petitioners received the acceptance of the contract from the respondent. Therefore, the contract can be said to have taken place

at two places at Mumbai as well as Ahmedabad and therefore both the courts have jurisdiction to entertain the suit arising out of the said contract. It, therefore, cannot be said that only the court at Ahmedabad has jurisdiction to entertain the suit arising out of the said contract.

17. Certain decisions have been referred on behalf of the parties. In Abdulla Bin Ali and others Vs. Galappa and others reported in AIR 1985 Supreme Court p.577. It has been laid down that the allegations made in the plaint decide the forum. The jurisdiction does not depend upon the defence taken by the defendants in the written statement.

The aforesaid well settled principle is not and cannot be in dispute. However, in the present case, it has to be considered that, even while reading the plaint and the documents, particularly, agreement in question, it is very clear that there is a positive mention in the contract that the dispute shall be referred only to the court at Mumbai. Therefore even accepting the principle enunciated in the aforesaid decision the matter will not travel in the different direction.

Another decision in the case of O.N.G.C. and others Vs. Modern Construction & Co. reported in 1997(3) GLR p.1855. The head-note reads as under:

"Sec.4 - Contracts - Cause of action for breach of - Contract is concluded at the place where offer is accepted and communication is despatched to the proposer - O.N.G.C. sent a telegram from Surat accepting offer of contractor based in Mehsana District - Contractual work was to be carried out at Surat - Held, Court at Mehsana had no jurisdiction to entertain suit by contractor for damages arising out of such a contract."

18. In the case before us, the acceptance was received at Mumbai; the payment was to be received by the petitioners at Mumbai; the petitioners have been staying at Mumbai and they have been carrying on business at Mumbai. This fact goes to suggest that even the Mumbai court has got jurisdiction to entertain the suit arising out of the said contract. It is more so when there is specific mention in the contract that the dispute shall be referred to the courts at Mumbai.

In P.P. Prabhakaran Vs. Medical Officer-In-Charge and others reported in 1984(1) GLR p.706. The head-note read as under:

"Secs.19, 20(c) - Actionable wrong occurs at a place 'A', its resulting effects or damage takes place at a place 'B' - Which court has jurisdiction - Cause of action - interpretation of - Held the court at the place where the resulting effects of the wrong are felt has also jurisdiction to try the suit - Even though the case of action, there, arises partly."

In A.B.C. Laminart Pvt. Ltd. and another Vs. A.P. Agencies, Salem reported in AIR 1989 Supreme Court p.1239. The head-note reads as under:

"Jurisdiction of Court - More than one court having jurisdiction - Contract to vest jurisdiction in one of them - Not against public policy."

In the aforesaid decisions, it has been observed that when more than one court has jurisdiction to entertain a litigation and if there is a contract to vest jurisdiction to one of them then, such a contract is not against the public policy. This was not the dispute between the parties in the present case. However, when the authority has been referred and relied upon, I refer the same.

19. It has then argued on behalf of the respondent that, as per the contract Clause 13 of the agreement, the parties have agreed that any dispute or any legal proceedings arising out of this Letter of Intent or relating to or in any manner connected with the dealership shall be referred to or executed in Mumbai Courts only. On a reference to the aforesaid Clause 13, it has been argued on behalf of the respondent that, by this agreement the parties have agreed that the courts should refer the dispute to the court at Mumbai. That the parties cannot agree to direct or compel the court to refer the dispute to a particular court. Therefore also this agreement cannot be acted upon as per the arguments on behalf of the respondent.

20. In my reading of this clause 13, the parties have not agreed to the effect that the court be directed to refer the dispute to a particular court. Agreement is that parties shall refer the dispute to the court at Mumbai. Therefore the court is not required to refer the dispute to the court at Mumbai but it is for the parties to refer the dispute to the court at Mumbai.



21. In aforesaid view of the matter, I am of the clear decision that the present suit arises out of the alleged violation of the said letter of intent dated 31st March, 1998, and the contents of this contract are not at all at dispute between the parties. The dispute is with respect to the dealership and any dispute relating to the dealership has been covered by Clause 13 of the contract. Therefore, it is very clear that the suit arising out of the alleged misdeed on the part of the petitioners with respect to the dealership will be referable to the court at Mumbai in terms of the agreement contained in Clause 13 of the agreement in question.

22. So it is very clear that two courts have jurisdiction to entertain the suit arising out of the said contract. The parties have positively agreed under a written contract signed by both of them to refer the dispute to the court at Mumbai only and therefore when two courts have jurisdiction to entertain the suit and when the parties have agreed to refer the dispute to a particular court then it necessarily exclude the jurisdiction of another court.

23. Under the aforesaid circumstances, I am of the clear decision that, the suit ought to be filed in the court at Mumbai and the court at Ahmedabad had no jurisdiction to entertain the suit since the parties, by mutual agreement, excluded the jurisdiction of the court at Ahmedabad.

24. In aforesaid view of the matter, the learned trial Judge has committed jurisdictional error in deciding that no part of contract has taken place at Mumbai and therefore the Mumbai court had no jurisdiction to entertain the suit in question. Apart from the place of contract, the trial court has not at all considered the fact that the payment was to be made to the petitioners at Mumbai and that the delivery of the tractor was to be effected by the petitioners from Mumbai. Therefore some part of the contract had taken place at Mumbai and some cause of action has arisen at Mumbai. Even cause of action at a particular place will give rise to the jurisdiction of the court for entertaining the dispute between the parties. Here, as said above, the contract has been signed by the petitioners at Mumbai; it has been despatched to the respondent from Mumbai; the petitioners have received acceptance at Mumbai; the payments were to be made at Mumbai and the delivery of the tractors was to be effected from Mumbai; the petitioners have been carrying a business at Mumbai, and under Section 20 of the CPC,

suit can be instituted within the local limits of whose jurisdiction the defendants at the time of the commencement of the suit actually and voluntarily reside or carrying on business or personal work. Therefore, even under Section 20 of the CPC, the petitioners have been residing and carrying on business at Mumbai. Therefore, even on that stand, the court at Mumbai has got jurisdiction to entertain the suit between the parties. Therefore, from all corners it has to be held that the aforesaid aspect has been totally omitted by the trial court. The result is that the Mumbai court has jurisdiction to entertain the suit alongwith the court at Ahmedabad, and since by contract it has been excluded by mutual agreement, the suit ought to be filed in the courts at Mumbai. With the result that, the order of the trial court is required to be interfered in this revision application as it has resulted in miscarriage of justice. The petitioners have been carrying on business in tractors, they may be having contract in several cities with respect to the dealership of the tractors. If there is any dispute with respect to the said dealership then there may be several litigations in different parts of the country and the petitioners would be required to move from court to court from pillar to post. With a view to avoid such a hardship, the aforesaid agreement appears to have been incorporated in the aforesaid agreement between the parties. Therefore if the petitioners are required to contest litigation in several courts in the country then naturally there would be miscarriage of justice and great hardship would be caused to the petitioners. Therefore aforesaid order of the trial court can be said to have resulted in failure of justice and miscarriage of justice. The trial court has committed material irregularity relating to jurisdiction in holding that the Mumbai court had no jurisdiction to entertain the suit at all.

25. The consequent effect is that the order passed by the trial court is required to be set aside. The Civil Revision Application is accordingly allowed. The application submitted by the petitioners before the trial court at Exh.34 is ordered to be allowed and it is hereby held that the civil court at Ahmedabad (Rural) has no jurisdiction to entertain the suit of the respondent and therefore the plaint of the suit shall be returned to the respondent for presentation before the court at Mumbai, being a court of competent jurisdiction, with due endorsement. The respondent shall be at liberty to present the plaint before the civil court at Mumbai within a month hereof. The parties shall remain present before that court on 30th June, 2000. This is with a

view to avoid delay in disposal of the suit at the stage of service of summons as contemplated by the CPC.

Rule is made absolute to the extent indicated above. The respondent shall pay cost of the petitioners and shall bear their own costs in this revision application.

After the pronouncement of judgment as aforesaid, the learned advocate for the respondent submits that the respondent would like to carry the matter before the Supreme Court in SLP and hence the operation of order as aforesaid be suspended for about four months.

Heard learned advocates for the parties. The operation of the aforesaid order is suspended for four months. Record and Proceedings may be sent back to the trial court immediately.

(D.P. Buch, J.)

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